

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN**

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DARWIN and CHERYL WATTS, GERALD  
and RHONDA STEPP, STEVEN and GINNY  
LEWIS, on behalf of themselves and all  
others similarly situated,

Case No. 1:10-cv-753

Plaintiffs,

Hon. Janet T. Neff

v.

ENBRIDGE, INC., a Canadian corporation,  
ENBRIDGE (U.S.) Inc., a Wisconsin corporation,  
and ENBRIDGE ENERGY COMPANY, INC.,  
a Wisconsin corporation,

Defendants.

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**BRIEF IN SUPPORT OF CONCURRENCE IN MOTION FOR  
CONSOLIDATION, AND APPLICATION OF THE MILLER LAW FIRM FOR  
APPOINTMENT AS INTERIM LEAD COUNSEL, AND APPLICATION OF MILLER  
JOHNSON FOR APPOINTMENT AS INTERIM CO-LEAD COUNSEL**

**STATEMENT OF ISSUES PRESENTED**

- I. Should the Court consolidate this class action with another class action alleging substantially the same claims?

Plaintiffs' Answer: Yes.

- II. Should the Court appoint The Miller Law Firm, P.C. as Interim Lead Counsel?

Plaintiffs' Answer: Yes.

- III. Should the Court appoint Miller Johnson as Interim Co-Lead Counsel?

Plaintiffs' Answer: Yes.

**CONTROLLING OR MOST APPROPRIATE AUTHORITIES**

**FEDERAL CASES**

*In re Northeast Ohio Correctional Center*, 211 F.3d 1269 (6<sup>th</sup> Cir. 2000)

*Investors Research Co. v. United States Dist. Court for Cent. Dist.*, 877 F.2d 777 (9<sup>th</sup> Cir. 1989)

*In re Delphi ERISA Litigation*, 230 F.R.D. 496 (E.D. Mich., 2005)

*Johnson v. Celotex Corp.*, 899 F.2d 1281 (2d Cir. 1990)

**FEDERAL STATUTES AND RULES**

Fed. R. Civ. P. 42(a)

On August 2, 2010, Plaintiffs filed this case, on behalf of themselves and a class of persons similarly situated, to redress the harms perpetrated against them by Defendants (the “Watts Class Action”). On July 30, 2010, just one business day prior to the filing of this suit, a similar suit was filed entitled *Volstromer v. Enbridge, Inc. et al.*, Case No. 10-cv-752 (the “*Volstromer* Class Action”) (the Watts Class Action and the *Volstromer* Class Action are together referred to as the “Actions”). The Watts Class Action and the *Volstromer* Class Action are based upon the same facts and circumstances, namely, the damage caused by the release of more than 800,000 gallons of oil from Defendants’ pipeline. The Plaintiffs in the Watts Class Action – Darwin and Cheryl Watts, Gerald and Rhonda Stepp, and Steven and Ginny Lewis (together, the “Named Plaintiffs”) – retained counsel experienced in litigating class action law suits and in litigating environmental matters. The Named Plaintiffs in the Watts Class Action filed a motion seeking to consolidate the two above-captioned cases and to have the Court appoint The Miller Law Firm, P.C. (“The Miller Law Firm”) as Interim Lead Counsel.

On August 26, 2010, Plaintiffs retained Miller Johnson to act as co-counsel with The Miller Law Firm. Miller Johnson now seeks to be appointed as interim co-lead counsel with The Miller Law Firm. Plaintiffs incorporate by reference their August 6, 2010 Brief in Support of Motion for Consolidation and Application of The Miller Law Firm, P.C. for Interim Lead Counsel.

Under FRCP 16(c) and FRCP 42(a), this Court has broad discretion to enter an appropriate order to facilitate the just and speedy disposition of this action, and to avoid unnecessary costs or delay. Appointment of interim lead counsel in this matter will promote the just, speedy, and inexpensive disposition of this matter. As discussed in Plaintiffs’ August 6, 2010 motion, The Miller Law Firm, is well-qualified to be appointed as interim lead counsel.

Miller Johnson is well-qualified to serve as interim co-lead counsel with The Miller Law Firm. Miller Johnson has extensive experience litigating complex matters throughout the State of Michigan. Jon R. Muth, David J. Gass, and James R. Peterson bring strong credentials to this matter.

For almost 40 years, Mr. Muth's practice has been solely devoted to litigation of civil matters. Mr. Muth spent a decade of his career heavily involved in environmental litigation. Mr. Muth is named in "The Best Lawyers in America" in the practice areas of alternative dispute resolution, bet-the-company litigation, commercial litigation, ethics and professional responsibility law, legal malpractice, and professional malpractice law. Mr. Muth has been named a Michigan "Super Lawyer" in general litigation, and is on the Top 10 Michigan Super Lawyers List.

Mr. Gass has been litigating complex commercial matters for almost 30 years. He is named as a Michigan Super Lawyer, and a Top 100 Lawyer in Michigan by Super Lawyers Magazine. He has also been listed in "Best Lawyers in America" for bet-the-company litigation, commercial litigation, and product liability litigation.

Mr. Peterson has litigated complex commercial matters for over 20 years. He has an "AV" rating from Martindale Hubbell, and is Chair of Miller Johnson's Litigation Section.

Miller Johnson and The Miller Law Firm have a strong professional relationship. The Miller Law Firm's extensive experience successfully litigating class actions combined with Miller Johnson's extensive experience successfully litigating complex matters in the Western District of Michigan will provide the class members with excellent representation, and with the best prospects of achieving a favorable and efficient result in this matter. The Miller Law Firm wholeheartedly supports a co-lead counsel arrangement with Miller Johnson.

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request this Court to enter an order granting the consolidation of this action with the *Volstromer* Class Action, appointing the named Plaintiffs in this matter as Lead Plaintiffs, and appointing The Miller Law Firm and Miller Johnson as interim co-lead counsel for the proposed consolidated action.

MILLER JOHNSON  
Attorneys for Plaintiffs

Dated: August 27, 2010

By /s/ James R. Peterson  
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